

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EDDIE OWENS,

Petitioner,

v.

Case 99-CV-75921

WAYNE STINE,

Honorable Patrick J. Duggan

Respondent.

ORDER DENYING CERTIFICATE OF APPEALABILITY

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan on May 2, 2006 .

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Petitioner Eddie Owens is a Michigan prisoner currently incarcerated at Oaks Correctional Facility, in Manistee, Michigan. On December 17, 1999, Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. In an Order dated December 19, 2000, this Court dismissed the petition with prejudice because Petitioner failed to comply with the one year limitations period under the Antiterrorism and Effective Death Penalty Act ("AEDPA"). Petitioner filed a motion seeking reconsideration of the Court's December 19, 2000 Order, or in the alternative, asking the Court to issue a certificate of appealability. On January 22, 2001, this Court denied Petitioner's motion for reconsideration, but granted Petitioner's motion for a certificate of

appealability.

On October 2, 2001, the U.S. Court of Appeals for the Sixth Circuit affirmed this Court's dismissal of Petitioner's habeas corpus petition because Petitioner failed to comply with the AEDPA's one year limitations period. *Owens v. Stine*, 27 Fed.Appx. 351, 2001 WL 1217001 (6th Cir. Oct. 2, 2001).

On October 30, 2003, the Sixth Circuit issued an Order denying Petitioner's motion for an order authorizing the district court to consider Petitioner's second or successive habeas corpus petition under 28 U.S.C. § 2254. On September 23, 2004, the Sixth Circuit again denied Petitioner's motion for an order authorizing the district court to consider a second or successive habeas corpus petition.

On March 27, 2006, Petitioner filed the following motions in this Court: (1) Petitioner's Motion for Relief from Judgment Pursuant to FED. R. CIV. P. 60(b); (2) Petitioner's Motion for the Authentication of the State Court November 28, 1990, Sentencing Transcript; and (3) Petitioner's Motion for an Evidentiary Hearing. In an Opinion and Order dated April 18, 2006, this Court denied all three motions.

On April 28, 2006, Petitioner filed a motion seeking a second certificate of appealability. For the reasons set forth below, the petition shall be denied.

In general, 28 U.S.C. § 2253 governs appeals of habeas corpus proceedings. Section 2253(a) provides that "[i]n a habeas corpus proceeding . . . before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held." However, unless a certificate of appealability is issued, an appeal may not be taken to the court of appeals from the final order in a habeas corpus

proceeding.

In this case, the Court already issued a certificate of appealability and the dismissal of Petitioner's habeas petition as untimely was appealed to the Sixth Circuit. Thus, the Court has no authority to issue a second certificate of appealability where this Court's dismissal of Petitioner's habeas petition as untimely was already reviewed and upheld by the Sixth Circuit.

Accordingly,

IT IS ORDERED that Petitioner's motion for a certificate of appealability is **DENIED**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:

Eddie Owens
231437
Oaks Correctional Facility
1500 Caberfae Highway
Manistee, MI 49660

William C. Campbell, Esq.